

**THE LABOR COMMISSION
WORKERS' COMPENSATION ADVISORY COUNCIL**

**Wednesday, June 11, 2008 - 12:00 P.M.
Room 319, Heber Wells Building
160 East 300 South
Salt Lake City, Utah**

The following Advisory Council members were in attendance:

Ralph Astorga, President USWA Local 392
Dawn Atkin, Esq.
Thomas Bingham, President, Utah Manufacturers Association
David Bird, Esq.
Reo Castleton, SL County Fire Department
Brandt Goble, Painters and Tapers Local 77
Brian Kelm, Esq.
James V. Olsen, President, Utah Food Industry Association
Jeff Rowley, Risk Manager, Salt Lake County
Richard J. Thorn, President/CEO, Associated General Contractors - Utah Chapter
Edward Holmes, M.D., RMCOEH
Susan Kelly, Liberty Mutual
Ron Pickup, Workers Compensation Fund
Brad Tibbitts, Utah State Insurance Department

The following Advisory Council members were excused:

Others Present:

Sherrie Hayashi - Commissioner
Alan Hennebold - Deputy Labor Commissioner
Larry Bunkall, Industrial Accidents Division Director, Labor Commission
Robyn Barkdull - Public Information Officer, Labor Commission
Dr. Alan Colledge - Medical Director, Labor Commission
Elena Bensor - Workplace Safety Manager, Labor Commission
Debbie Hann - Administrative Law Judge, Labor Commission
Aurora Holley - Administrative Law Judge, Labor Commission
Lorri Lima - Administrative Law Judge, Labor Commission
Diedre Marlow - Administrative Law Judge, Labor Commission
Karla Rush - Adjudication Division, Labor Commission
Richard Squires - Attorney
Dennis Lloyd - Workers Compensation Fund
Bern Okusu - University of Utah Labor Commission
Matt Cardon - Cardon
Ron Dressler - Policy Director, Labor Commission
Larry Williams - Policy, Labor Commission

WELCOME

1. Welcome - Commissioner Hayashi

Commissioner Hayashi brought the meeting to order at 12:00 p.m.

2. Miscellaneous Business – Commissioner Hayashi

a. Approval of Minutes -

Jeff Rowley moved to approve the minutes of the March 19, 2008 meeting. **Brandt Goble** seconded the motion which passed unanimously.

b. Review 2008 Meeting Schedule –

Dates were confirmed for the remainder of 2008: Wednesday, September 10 and Thursday, November 20.

c. Announce Advisory Council Appointments and Discussion of Legislative Liaison to be invited to serve -

Commissioner Hayashi announced that **Thomas Bingham, James Olsen, Dawn Atkin, Brian Kelm and Ed Holmes** were all being reappointed to serve another term on the Council. She said that the Commission would like to make sure **Ms. Akin and Mr. Kelm's** terms are staggered to avoid a potential problem if they both left the council at the same time. It was agreed that **Mr. Kelm's** term would expire in 2010 and **Ms. Atkin's** in 2012.

Commissioner Hayashi asked Council members to send names to the Commission for consideration as legislative liaison to the WCA Council. She said it would be helpful if those names submitted had experience and/or expertise in sponsoring or promoting legislation in the workers' compensation field.

3. Report on 2008 Workplace Safety Grants – Elena Bensor

Ms. Bensor distributed copies of the Actual FY09 budget for the Labor Commission Workplace Safety Account. The handout had a breakdown of expenses including salaries, benefits, operating expenses, the workplace safety poster contest expense, grants and the pain management study funded in conjunction with the Utah Department of Health. The total appropriation for FY 09 is \$1,580,300.

Commissioner Hayashi commented that the program has grown and received much more public interest over the last few years bringing an increasing number of application requests for consideration each year.

4. Report on Survey of Employer Interest in LC Developing a WC Hospital Fee Schedule - Dr. Colledge

At the last WCA Meeting, **Commissioner Hayashi** asked **Dr. Alan Colledge** to research the current interest in the employer/payer community for having the Commission develop a WC hospital fee schedule. **Dr. Colledge** said he sent letters out to 13 of the 17 contacts he had and of those, none had responded to his request. Given the response, he advised the Council that he did not believe there was sufficient support from the employer/payer community for the Commission to have much success in pursuing a hospital fee schedule at this time.

Mr. Olsen reminded the Council Members that this issue had been researched and brought before the Council before by the Hospital Fee Subcommittee and the WCA Council had never taken any action.

Mr. Rowley said he would try and discuss the issue with the self-insureds.

The WCA Council decided to leave this item on hold for the time being.

5. Discussion on Employer Interest in LC Developing a WC Pharmaceutical Fee Schedule – Larry Bunkall

Mr. Bunkall said he has had an increasing number of inquiries regarding a pharmaceutical fee schedule. **Mr. Hennebold** explained that currently the LC does not have the statutory authority to implement and regulate a pharmaceutical fee schedule.

After some discussion, **Mr. Rowley** suggested that the hospital fee schedule was the more pressing issue and when that course had been determined, perhaps the same steps could be followed to consider pursuing a pharmaceutical fee schedule.

Dr. Colledge said the Utah Dept. of Health was also looking into adopting a general pharmaceutical fee schedule and perhaps the Commission could see where that went and then dovetail in with that process.

Dr. Holmes said the issue may start to resolve itself if left alone as future Treatment Guidelines may address and help define the solution.

MOTION: Mr. Olsen moved to advise the Commission to do nothing at the present but to monitor the interest in a pharmaceutical fee schedule and reconsider at a future time. **Mr. Rowley** seconded the motion which passed unanimously.

6. News Release on Utah LC not accepting or using the AMA Guides to Evaluation of Permanent Impairment, 6th Edition – Dr. Colledge

Dr. Colledge explained that the 6th Edition AMA Guides had come out in January 2008. He said he had been involved in the work on this edition and had given feedback throughout the process. He expressed frustration that when the Guides came out, the Utah considerations had not been incorporated and were, in his opinion, very poorly done and did not represent the needs of Utah. He had asked that his name be removed from the credits for the Guides. Therefore, the LC put out a news release announcing that they would not be adopting the 6th Edition AMA Guides and would be instead using the 2006 5th Edition AMA Guides to Evaluation of Permanent Impairment.

Ms. Atkin asked which guides should be used to evaluate psychological impairment. Currently the 2nd Edition guides are being used as there isn't anything more current.

MOTION: Mr. Kelm moved to advise the Commission to continue using the 2nd Edition guides for use in evaluating psychological impairment.

Mr. Hennebold stated he thought the Commission should hold off to see what other methods might be available before voting on a motion concerning a psychological impairment rating. He said the WCA Council should not pose evidentiary standards.

SUBSTITUTE MOTION: Mr. Bird moved to advise the Labor Commission to defer taking any action on this issue until it could be discussed following more input at a future meeting. **Mr. Kelm** seconded the motion which passed unanimously.

Mr. Hennebold will follow up with getting this information together for the next WCA meeting.

7. Update on Public Safety Officers' WC Presumption for Drug Exposure (Memo from Kurt Hegmann) – Reo Castleton

Council members had been sent a memo from **Kurt Hegmann** regarding progress on the study being funded to determine drug exposure for firefighters and police officers. **Mr. Castleton** discussed the memo and explained that invitations had been sent to 2,862 firefighters and 5,760 police officers, which exceeded the target of potential study participants. However, he expressed concern in the fact that less than 10% of those invited have currently enrolled, but did see an upward momentum in enrollment over the last couple of weeks and hopes it continues to increase. **Mr. Castleton** expressed his disappointment that there was not more interest than that and asked **Commissioner Hayashi** if she would be willing to work with them on a PSA or some other media project to encourage participation. **Commissioner Hayashi** expressed support in any way possible to make this study successful.

Council members expressed frustration with the current status of the study and were concerned about the money spent to fund it from the Workplace Safety Fund. Concern was also expressed as to how the legislature would respond to the low interest shown so far in this study. **Mr. Bird** asked for an updated report at the September meeting of the WCA Council.

8. Rule Changes R602 – Debbie Hann

Ms. Hann, Administrative Law Judge, Adjudication Division, explained that Adjudication is proposing administrative rule changes to the existing procedural rule, R602-2, Adjudication of Workers' Compensation and Occupational Disease Claims. The proposed changes to the existing rule would consolidate adjudication forms into one rule, define the official hearing record as the recording made by the ALJ, and move pre-litigation medical panel evaluation approvals from Adjudication to the Industrial Accidents Division. The council asked that the medical panel rule change be coordinated with Industrial Accidents Division rulemaking so there is no break in the rule.

MOTION: Ms. Atkin moved to advise the Commission to incorporate the changes proposed for the adjudication of workers' compensation, including coordinating the timing of moving jurisdiction of medical panels to the Industrial Accidents Division.

Mr. Dennis Lloyd, Workers Compensation Fund, cautioned the Commission to obtain input from all stakeholders in the process before making these changes.

It was noted that there was a typo on the last page of the document and that "F" and "E" should be changed around to put them in order.

Ms. Atkin withdrew her motion.

Newly created rule R602-4, Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment creates an expedited hearing process to implement H.B. 384 ("Morley Bill") which goes into effect on July 1, 2008.

The expedited hearing process utilizes mandatory mediation prior to filing a hearing request, similar to R612-1-10 expedited permanent total disability hearings. It also requires mandatory disclosure of information rather than through a formal discovery process. This rule will be implemented through emergency rule making. Input will be taken from attorneys in practice for the final form of the rule. Adjudication will not be implementing substantive rules interpreting H.B. 384.

R602-5, Procedures for Resolving Disputes Regarding "Cooperation" and "Diligent Pursuit", is a new rule to implement hearing procedures for the permanent total disability expedited hearings that are currently contained in R612-1-10 (industrial accidents rule on permanent total disability).

R602-2-5, related to settlement agreements, is being moved with no change in the language to a new section, R602.6.

MOTION: Mr. Bird moved to defer any action on the final rule and seek input from all stakeholders involved before proceeding through the rulemaking process. **Ms. Atkin** seconded the motion which passed unanimously.

Ms. Hann stated that the Adjudication Division had explored ideas to draft this procedure which included looking at what other agencies do. She indicated that this would be the framework for the procedure and encouraged comments on the guidelines. She said the new Rules would need some adjusting as they worked through the procedures with actual cases.

9. New WC Rules and Changes to WC Rules being considered – Larry Bunkall

Mr. Bunkall asked **Ron Dressler, Policy Manager**, Industrial Accidents Division, to address the new WC Rules. **Mr. Dressler** explained the following changes:

R612-11. Prohibition of Direct Payments by Insured Employer. This rule will assess a penalty for direct payment of workers' compensation benefits by an insured employer.

R612-12. Reporting requirements for Workers' Compensation Waivers. This Rule mandates that insurance carriers issuing a waiver shall file with the Labor Commission a monthly report by the 5th of each month, or the first business day thereafter.

R612-3-3 and R612-3-6. There is a need to change this rule to authorize a \$600 annual fee for renewal of self-insured employers not currently specified in the rule.

MOTION: Mr. Bingham moved to recommend to the Commission that the necessary language be drafted to proceed through the rulemaking process with these changes. **Mr. Thorn** seconded the motion which passed unanimously.

10. Review Possible WC Legislation for 2009 General Session – Larry Bunkall

Mr. Bunkall had mailed a list of proposed changes for WC to each of the Council members. He directed their attention to the list and identified two items as having a high priority:

1. Removal of the Social Security retirement offset in Permanent Total Disability and widow cases, and;
2. Attorney fees on medical bills and for medical only cases.

He asked council members to review the list and notify him of their priorities.

11. Review of ERF and UEF Budgets and Staffing – Larry Bunkall

Mr. Bunkall had sent Council members information regarding funding for both the ERF and the UEF budgets prior to the meeting. He said that the ERF is funded by a 7 1/2% assessment on workers' compensation premiums paid by all employers in Utah, as well as the interest earned on that account. Liability to the fund includes disability payments, administrative costs, reimbursement to insurance carriers, and disputed claims payments.

Mr. Bunkall said the UEF is funded by 0.5% assessment on workers' compensation premiums paid by all employers in Utah, penalties collected from non-compliance of workers' compensation, and the interest earnings from the fund. He said liabilities to that fund include medical payment, disability payments,

administrative costs, and \$1,240,000 to the Industrial Accidents Division budget which had been appropriated by the 08-09 Legislature.

Mr. Bunkall expressed his concern that the Industrial Accidents Division was being 90% funded by the UEF and felt this was an inappropriate use of the UEF's money. He said the Legislature should appropriate money from the General Fund for the Industrial Accidents budget, not expect employers in Utah to fund it.

Mr. Olsen also expressed concern agreeing that as employers are funding the UEF, it is an improper use of their money to use it for the Industrial Accident's Budget. He said the state of Utah should be funding the Division, not employers. He asked that this item be placed on the September agenda for more in depth discussion.

12. Other Business – Commissioner Hayashi

As there was no other business, **Commissioner Hayashi** adjourned the meeting at 2:15 p.m.